

December 15, 2003

Secretary Mary Cottrell  
Department of Telecommunications and Energy  
One South Station  
Boston, MA 02110

**RE: Massachusetts Electric Co./Nantucket Electric Co., “Now is the Time to Choose”  
DTE 03-123**

Dear Secretary Cottrell:

The Massachusetts Community Action Program Directors’ Association (“MassCAP”) hereby submits its comments in response to the petition of Massachusetts Electric Company and Nantucket Electric Company (“MECO” or “Company”) to adopt the “Now is the Time to Choose” program and to maintain its current Standard Offer Service Fuel Adjustment (“SOSFA”). MassCAP opposes MECO’s request as presented because it may result in an artificially high standard offer price, contrary to statute (G. L. ch. 164, §1B), and because it has a strong potential to result in unfair, deceptive or fraudulent misrepresentations of electricity prices and terms to low-income customers.

On October 30, 2003, MECO filed a letter request (“Letter”) to continue its SOSFA at 1.424¢/kWh through the remainder of the standard offer period in connection with offering “Now is the Time to Choose.”<sup>1</sup> MECO notes that the price of standard offer is now higher than default service and, it asserts, higher than the prices that some competitors are willing to offer to residential customers. Therefore, MECO believes that it should advise its customers of these facts and urge them to move to competitive supply, in a “joint information campaign” it plans to conduct with those suppliers. It seeks to maintain its current SOSFA through the end of the standard offer period so that the price will not be subject to variation, making it easier for competitive suppliers to offer a price that will beat the standard offer.

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<sup>1</sup> By letter dated December 12, 2003, MECO asks that the Department extend the comment deadline on the “Now is the Time to Choose” program through January 14, 2004, but maintain the December 15, 2003 deadline for commenting on the proposal to maintain the SOSFA. MassCAP chooses to file comments on both topics at the present time, but reserves its right to file additional comments if the Department extends the deadline and MECO provides supplemental or revised information about “Now is the Time to Choose.”

MassCAP opposes MECO's request to the extent that it will lead to low-income customers, including those on either standard offer or default service, being contacted and solicited to switch to competitive supply. MassCAP anticipates that the "joint information campaign" will harm low-income customers in particular, as more fully explained below. MassCAP also expresses its concerns about the paucity of MECO's filing, particularly the content of the "bill messages or inserts" that will be sent to residential customers. Letter, p. 3. These concerns are closely intertwined with the concern that the proposed program may well confuse, deceive and harm low-income customers.

The essence of MECO's proposal from the perspective of a residential customer is that MECO will (1) set a single, unchanging SOFSA through the end of the standard offer period and (2) send bill messages or inserts providing information to customers about the price of standard offer service and the price that one or more competitive suppliers are willing to offer. Letter, p. 3. MECO does not provide copies of the proposed messages, or even outline what information will be included. This lack of information, MassCAP believes, is a critical defect, especially from the perspective of low-income customers. As the Department well knows, low-income customers have the right to remain on or switch to standard offer at any time during the standard offer period. G. L. 164, § 1F(4)(iii). This includes the right to move from default service to standard offer service. *Id.* Further, low-income customers are automatically switched from standard offer to default service by distribution companies when the price of the latter service is lower. 220 C.M.R. 11.04(9)(e). Thus, if MECO were to inform a low-income customer, in a bill stuffer or message sent to all residential customers, that particular suppliers are making offers lower than standard offer, such a message would fundamentally mislead or deceive a low-income customer about the proper choice to make. While MECO apparently intends to inform customers that specified suppliers are willing to beat a standard offer of either 6.124¢/kWh or 6.524¢/kWh (Letter, p. 3), it is critical to inform low-income customers that default prices are now 5.7¢/kWh and may drop to lower. Letter, p. 3. MECO's filing nowhere even suggests that any of the competitive suppliers are willing to beat the current or projected price of default service. If the competitive suppliers are offering prices that are lower than standard offer, but higher than default, it would violate applicable and very explicit regulations to fail to disclose all of these prices and the consequences of switching to competitive supply.

In the absence of seeing the content of notices that MECO intends to send, but given the key parameters of the program that MECO has described, it appears that MECO would be engaging in a violation of G. L. ch. 93A, §2 and the Attorney General's implementing regulations (940 C.M.R. 3.16), as well as of the Attorney General's Retail Marketing and Sale of Electricity Regulations, 940 C.M.R. Part 19.00.

G. L. c. 93, §2(a) provides: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." The Attorney General has adopted implementing regulations, 940 C.M.R. 3.16, which more specifically provide:

Without limiting the scope of any other rule, regulation or statute, an act or practice is a violation of G. L. c.93A, § 2 if:

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(2) Any person or other legal entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction.

This regulation alone requires MECO to disclose to customers the known and likely projected prices for standard offer and default service and the consequences of switching to competitive supply, if the Company chooses to engage in a joint information campaign with suppliers.

Numerous provisions of the Attorney General’s Retail Marketing and Sale of Electricity Regulations are far more specific on this point. For example, 940 C.M.R. 19.04(g) prohibits any “retail seller of electricity,” which would include MECO and any competitive supplier (see 940 C.M.R. 19.03), from making any statement relating to the “difference between any price being charged by any retail seller of electricity . . . and any price being charged by any other retail seller of electricity” in a manner “which the seller knows or should know has the capacity or tendency to deceive or mislead a reasonable consumer, or that has the effect of deceiving or misleading a reasonable consumer.” Given the complexity and fluidity of the pricing and terms for standard offer, default service, and competitive supply, as well as the consequences of switching to competitive supply, the Department cannot approve the “Now is the Time to Choose” program without a much fuller understanding of the actual content of the messages MECO intends to send, and which customers will receive those messages. Clearly, MECO will be making representations about the “difference between any price being charged by any retail seller of electricity . . . and any price being charged by any other retail seller of electricity,” and the Department should be vigilant in making sure any such representations do not have “the capacity or tendency to deceive or mislead a reasonable consumer.”

It is essential that MECO and any competitive suppliers working with MECO disclose to low-income customers that they will not benefit by switching from standard offer to competitive supply, unless that competitive supplier’s price is guaranteed to beat both the price of default and standard offer service through the end of the standard offer period. But if such disclosure is made, MECO’s program makes no sense as there is no purpose in soliciting these customers.

MECO may offer that it will make sure that none of its low-income customers will receive any of the bill messages or inserts. However, MassCAP is concerned that there are unquestionably large numbers of low-income customers who are not aware of their rights as low-income customers and who therefore are not known by MECO to be low-income customers. The Department is well aware that only a fraction of low-income customers identify themselves as such for purposes of enrolling onto discount rates or for purposes of getting onto standard offer

service when the price for that service is lower than default service.<sup>2</sup> These customers could easily be misled or deceived into switching to competitive supply, when it may be adverse to their interests to do so. If MECO runs a program like “Now is the Time to Choose,” this only heightens its obligation to make sure that any marketing materials highlight the right of low-income people to be on either the standard offer rate (G. L. ch. 164, §1F(4)(iii)) or the default rate, if that is lower (220 C.M.R. 11.04(9)(e)). The Company’s obligation to conduct outreach to low-income households is ongoing and “substantial.” G. L. ch. 164, §1F(4)(i).

Other provisions of the Attorney General’s regulations that may constrain MECO’s plans for “Now is the Time to Choose,” depending on the actual content of notices, include 940 C.M.R. §19.05(2) [general disclosure requirement]; §19.05(3)(c) [requiring disclosure of the availability of default service]; and §19.06(3) [governing price comparisons].

MassCAP also has more general concerns that cross all income categories and that should give the Department pause in considering MECO’s request. Distribution companies like MECO are under the obligation to offer a “standard service transition rate “for a transition period of seven years at prices and on terms approved by the department . . . after a competitive bid process.” G. L. ch. 164, §1B(b). Distribution companies are under an obligation to “obtain generation supplies to serve standard offer customers at the lowest possible price.” *Massachusetts Electric Company*, DPU/DTE 96-25, p. 36. Yet MECO seems so interested in signaling customers to move to the competitive market that it is proposing to fix its SOSFA at a level that may, in retrospect, prove to be above “the lowest possible price” (*id.*). Its own submission shows that a SOSFA of 1.424¢/kWh could lead to an over-recovery of its costs. Letter, Attachment 2, “Standard Offer Deferral Estimates at Different Fuel Price Points.”<sup>3</sup>

MECO reacts to the fact that less than 1% of its residential customers have chosen competitive supply by proposing to assist largely unregulated, competitive companies to do their marketing. This is consistent with what appears to be MECO’s business plan of exiting the retail function. MassCAP has a different reaction to the salient fact that few residential customers

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<sup>2</sup> See Division of Energy Resources, “Electric Discount Rate Outreach and Eligibility Report” (Winter 2001/2002), reporting that only 27% of the eligible households were actually enrolled on the discount rate as of 1999. While DOER has informally reported higher numbers since, the penetration rate is still well below 50%. The Department has fully explored the issues surrounding enrollment on the discount rates in DTE 01-106 and directed companies to take additional steps to increase enrollment. See interim order, DTE-01-106-A (Aug. 8, 2003).

<sup>3</sup> MECO submitted revised projections of the potential over- or under-recovery by letter dated December 12. However, these quickly-changing estimates only reinforce MassCAP’s concern that MECO may be so interested in moving customers to the competitive market that it ends up setting a SOSFA that overstates its actual costs. While any over-recovery would be adjusted for after the standard offer period ends, this would still result in inappropriate price signals that customers should move to competitive supply.

have migrated to competitive supply. The fact that there is virtually no competition in the residential market reflects underlying economic realities which limit the ability of competitive suppliers to provide real price advantages to residential customers, especially low-income customers. The basic legislative intent behind the Restructuring Act is to make sure that there is “[a]ffordable electric service [for] . . . all consumers on reasonable terms and conditions,” St. 1997, ch. 164, §1(b), not to make it easier for Dominion Retail or Select Energy or Constellation New Energy to add new customers in Massachusetts. To the extent that competitive suppliers cannot beat default service prices or standard offer prices, whichever is lower at a particular time, customers who are currently on the lower rate or eligible for it may well be better off remaining on these distribution company offerings. In these circumstances, the Department should not make it easier for competitive companies to market their products or services.

Even to the extent that some competitive suppliers may be able to beat the higher of the two rates (standard offer, at the present time), the Department should be wary of distribution company schemes that benefit a small subset of licensed suppliers or brokers. Only one currently licensed company, Dominion Retail, is apparently even considering an offer to residential customers that would be lower than standard offer.<sup>4</sup> In the residential sector, “Now is the Time to Choose” appears to be an unjustified boon to Dominion, at the possible expense of other companies. The Department should not support proposals that are anti-competitive, yet MECO’s proposal would give Dominion an unfair advantage compared to other companies: unique access to residential billing envelopes, with the Department’s blessing.

MassCAP therefore urges the Department to reject MECO’s “Now is the Time to Choose” filing as currently described by MECO. It holds the strong potential for misleading or deceiving low-income consumers, absent safeguards in the bill inserts and/or messages that do not yet appear to be part of MECO’s planning. Further, the proposal has the tendency to be anti-competitive, by favoring one particular company currently willing to make offers to residential customers. The Department should avoid fixing the SOSFA at a set price for the remainder of the standard offer period because this may lead to an over-collection and therefore to distorted pricing signals.

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<sup>4</sup> While MECO lists MXEnergy as also considering such an offer, this company is not currently licensed, at least according to the Department’s web site listing of licensed suppliers.

Respectfully Submitted  
Massachusetts Community Action Program Directors' Association

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